



1 10, below, that this Stipulated Protective Order creates no entitlement to file confidential  
2 information under seal; Civil Local Rule 39-141 sets forth the procedures that must be followed  
3 and reflects the standards that will be applied when a party seeks permission from the court to  
4 file material under seal.

5 2. DEFINITIONS

6 2.1 Party: any party to this action, including all of its officers, directors, employees,  
7 consultants, retained experts, and respective counsel (and their support staff).

8 2.2 Disclosure or Discovery Material: all items or information, regardless of the  
9 medium or manner generated, stored, or maintained (including, among other things, testimony,  
10 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
11 discovery in this matter.

12 2.3 “Confidential” Information or Items: information (regardless of how generated,  
13 stored or maintained) or tangible things that qualify for protection under standards developed  
14 under F.R.Civ.P. 26(c).

15 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely  
16 sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty  
17 would create a substantial risk of serious injury that could not be avoided by less restrictive  
18 means.

19 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
20 Producing Party.

21 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery  
22 Material in this action.

23 2.7. Designating Party: a Party or non-party that designates information or items that  
24 it produces in disclosures or in responses to discovery as “Confidential” or “Highly  
25 Confidential— Attorneys’ Eyes Only.”

26 2.8 Protected Material: any Disclosure or Discovery Material that is designated as  
27 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”  
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1           2.9     Expert: a person with specialized knowledge or experience in a matter pertinent  
2 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or  
3 as a consultant in this action and who is not a past or a current employee of a Party or of a  
4 competitor of a Party's and who, at the time of retention, is not anticipated to become an  
5 employee of a Party or a competitor of a Party's. This definition includes a professional jury or  
6 trial consultant retained in connection with this litigation.

7           2.10   Professional Vendors: persons or entities that provide litigation support  
8 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
9 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
10 subcontractors.

11     3.     SCOPE

12           The protections conferred by this Stipulation and Order cover not only Protected Material  
13 (as defined above), but also any information copied or extracted therefrom, as well as all copies,  
14 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
15 parties or counsel to or in court or in other settings that might reveal Protected Material.

16     4.     DURATION

17           Even after the termination of this litigation, the confidentiality obligations imposed by  
18 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
19 order otherwise directs.

20     5.     DESIGNATING PROTECTED MATERIAL

21           5.1     Exercise of Restraint and Care in Designating Material for Protection. Each  
22 Party or non-party that designates information or items for protection under this Order must take  
23 care to limit any such designation to specific material that qualifies under the appropriate  
24 standards. A Designating Party must take care to designate for protection only those parts of  
25 material, documents, items, or oral or written communications that qualify – so that other  
26 portions of the material, documents, items, or communications for which protection is not  
27 warranted are not swept unjustifiably within the ambit of this Order.  
28

1 If it comes to a Party's or a non-party's attention that information or items that it  
2 designated for protection do not qualify for protection at all, or do not qualify for the level of  
3 protection initially asserted, that Party or non-party must promptly notify all other parties that it  
4 is withdrawing the mistaken designation.

5 5.2. Manner and Timing of Designations. Except as otherwise provided in this  
6 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or  
7 ordered, material that qualifies for protection under this Order must be clearly so designated  
8 before the material is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (apart from transcripts of depositions or  
11 other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL"  
12 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the bottom of each page  
13 that contains protected material. If only a portion or portions of the material on a page qualifies  
14 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by  
15 making appropriate markings in the margins) and must specify, for each portion, the level of  
16 protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
17 ATTORNEYS' EYES ONLY").

18 A Party or non-party that makes original documents or materials available for inspection  
19 need not designate them for protection until after the inspecting Party has indicated which  
20 material it would like copied and produced. During the inspection and before the designation,  
21 all of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –  
22 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants  
23 copied and produced, the Producing Party must determine which documents, or portions thereof,  
24 qualify for protection under this Order, then, before producing the specified documents, the  
25 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY  
26 CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the bottom of each page that contains  
27 Protected Material. If only a portion or portions of the material on a page qualifies for  
28 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by

1 making appropriate markings in the margins) and must specify, for each portion, the level of  
2 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
3 ATTORNEYS’ EYES ONLY”).

4 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
5 Party or non-party offering or sponsoring the testimony identify on the record, before the close  
6 of the deposition, hearing, or other proceeding, all protected testimony, and further specify any  
7 portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
8 ONLY.” When it is impractical to identify separately each portion of testimony that is entitled  
9 to protection, and when it appears that substantial portions of the testimony may qualify for  
10 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the  
11 record (before the deposition or proceeding is concluded) a right to have up to 20 days to  
12 identify the specific portions of the testimony as to which protection is sought and to specify the  
13 level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
14 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately  
15 designated for protection within the 20 days shall be covered by the provisions of this Stipulated  
16 Protective Order.

17 Transcript pages containing Protected Material must be separately bound by the court  
18 reporter, who must affix to the bottom of each such page the legend “CONFIDENTIAL” or  
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or  
20 nonparty offering or sponsoring the witness or presenting the testimony.

21 (c) for information produced in some form other than documentary, and for any other  
22 tangible items, that the Producing Party affix in a prominent place on the exterior of the  
23 container or containers in which the information or item is stored the legend  
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only  
25 portions of the information or item warrant protection, the Producing Party, to the extent  
26 practicable, shall identify the protected portions, specifying whether they qualify as  
27 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”  
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1           5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’  
3 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection  
4 under this Order for such material. If material is appropriately designated as “Confidential” or  
5 “Highly Confidential – Attorneys’ Eyes Only” after the material was initially produced, the  
6 Receiving Party, on timely notification of the designation, must make reasonable efforts to  
7 assure that the material is treated in accordance with the provisions of this Order.

8       6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9           6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
10 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
11 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
12 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
13 promptly after the original designation is disclosed.

14           6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating  
15 Party’s confidentiality designation must do so in good faith and must begin the process by  
16 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)  
17 with counsel for the Designating Party. In conferring, the challenging Party must explain the  
18 basis for its belief that the confidentiality designation was not proper and must give the  
19 Designating Party an opportunity to review the designated material, to reconsider the  
20 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
21 designation. A challenging Party may proceed to the next stage of the challenge process only if it  
22 has engaged in this meet and confer process first.

23           6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality  
24 designation after considering the justification offered by the Designating Party may file and  
25 serve a motion under Civil Local Rule 78-230 that identifies the challenged material and sets  
26 forth in detail the basis for the challenge. Each such motion must be accompanied by a  
27 competent declaration that affirms that the movant has complied with the meet and confer  
28 requirements imposed in the preceding paragraph and that sets forth with specificity the

1 justification for the confidentiality designation that was given by the Designating Party in the  
2 meet and confer dialogue.

3 The burden of persuasion in any such challenge proceeding shall be on the Designating  
4 Party. Until the court rules on the challenge, all parties shall continue to afford the material in  
5 question the level of protection to which it is entitled under the Producing Party's designation.

6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
8 or produced by another Party or by a non-party in connection with this case only for prosecuting,  
9 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
10 to the categories of persons and under the conditions described in this Order. When the  
11 litigation has been terminated, a Receiving Party must comply with the provisions of Section 11,  
12 below.

13 Protected Material must be stored and maintained by a Receiving Party at a location and  
14 in a secure manner that ensures that access is limited to the persons authorized under this Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
16 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
17 disclose any information or item designated CONFIDENTIAL only to:

18 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
19 employees of said Counsel to whom it is reasonably necessary to disclose the information for  
20 this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is  
21 attached hereto as Exhibit A;

22 (b) the employees of the Receiving Party to whom disclosure is reasonably necessary  
23 for this litigation and who have signed the "Agreement to Be Bound by Protective Order"  
24 (Exhibit A);

25 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is  
26 reasonably necessary for this litigation and who have signed the "Agreement to Be  
27 Bound by Protective Order" (Exhibit A);

28 (d) the Court and its personnel;

1 (e) court reporters, their staffs, and professional vendors to whom disclosure is  
2 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
3 Protective Order" (Exhibit A);

4 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
5 necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A).  
6 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected  
7 Material must be separately bound by the court reporter and may not be disclosed to  
8 anyone except as permitted under this Stipulated Protective Order.

9 (g) the author of the document or the original source of the information.

10 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
11 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
12 Designating Party, a Receiving Party may disclose any information or item designated  
13 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

14 (a) the Receiving Party's Counsel of record in this action, as well as employees of  
15 said Counsel to whom it is reasonably necessary to disclose the information for this litigation  
16 and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto  
17 as Exhibit A;

18 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary  
19 for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order"  
20 (Exhibit A),

21 (c) the Court and its personnel;

22 (d) court reporters, their staffs, and professional vendors to whom disclosure is  
23 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
24 Protective Order" (Exhibit A); and

25 (e) the author of the document or the original source of the information.

26 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
27 LITIGATION.

28 If a Receiving Party is served with a subpoena or an order issued in other litigation that



1 would compel disclosure of any information or items designated in this action as  
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the  
3 Receiving Party must so notify the Designating Party, in writing (by facsimile, if possible)  
4 immediately and in no event more than three court days after receiving the subpoena or order.  
5 Such notification must include a copy of the subpoena or court order.

6 The Receiving Party also must immediately inform in writing the Party who caused the  
7 subpoena or order to issue in the other litigation that some or all the material covered by the  
8 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
9 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
10 caused the subpoena or order to issue.

11 The purpose of imposing these duties is to alert the interested parties to the existence of  
12 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
13 protect its confidentiality interests in the court from which the subpoena or order issued. The  
14 Designating Party shall bear the burdens and the expenses of seeking protection in that court of  
15 its confidential material – and nothing in these provisions should be construed as authorizing or  
16 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

17 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
19 Material to any person or in any circumstance not authorized under this Stipulated Protective  
20 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
21 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,  
22 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
23 this Order, and (d) request such person or persons to execute the “Acknowledgment and  
24 Agreement to Be Bound” that is attached hereto as Exhibit A.

25 10. FILING PROTECTED MATERIAL.

26 Without written permission from the Designating Party or a court order secured after  
27 appropriate notice to all interested persons, a Party may not file in the public record in this action  
28

1 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
2 with Civil Local Rule 39-141.

3 11. FINAL DISPOSITION.

4 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
5 after the final termination of this action, each Receiving Party must return all Protected Material  
6 to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,  
7 abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
8 Protected Material. With permission in writing from the Designating Party, the Receiving Party  
9 may destroy some or all of the Protected Material instead of returning it. Whether the Protected  
10 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
11 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day  
12 deadline that identifies (by category, where appropriate) all the Protected Material that was  
13 returned or destroyed and that affirms that the Receiving Party has not retained any copies,  
14 abstracts, compilations, summaries or other forms of reproducing or capturing any of the  
15 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
16 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney  
17 work product, even if such materials contain Protected Material. Any such archival copies that  
18 contain or constitute Protected Material remain subject to this Protective Order as set forth in  
19 Section 4 (DURATION), above.

20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
22 seek its modification by the Court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
24 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
25 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
26 no Party waives any right to object on any ground to use in evidence of any of the material  
27 covered by this Protective Order.  
28

1 **IT IS SO STIPULATED BY AND BETWEEN THE PARTIES THROUGH THEIR**  
2 **COUNSEL OF RECORD:**

3  
4 Dated: November 2, 2005

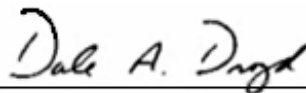
5 \_\_\_\_\_/S/  
6 James S. Ortiz, III  
7 Attorney for Plaintiff

8 Dated: November 2, 2005

9 \_\_\_\_\_/S/  
10 Kristin L. Oliveira  
11 Gregory L. Spallas  
12 Attorneys for Defendant  
13 WAL-MART STORES, INC.

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15  
16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17  
18 Dated: December 13, 2005

19   
20 \_\_\_\_\_  
21 DALE A. DROZD  
22 UNITED STATES MAGISTRATE JUDGE  
23  
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25  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_, of \_\_\_\_\_, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on \_\_\_\_\_ in the case of ***Michael Fuller v. Wal-Mart, Inc. Case No. 2:05-CV-00849-FCD-DAD.***

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed:

\_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

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